

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

Michael Cherek,

Plaintiff,

vs.

BNSF Railway Company, a Delaware
Corporation,

Defendant.

Court File No.: 8:23-cv-00541

COMES NOW the Plaintiff, Michael Cherek, and for his claims and cause of action against Defendant states and alleges as follows:

COUNT I

1. At all material times Defendant BNSF Railway Company (BNSF) was and is a Delaware corporation doing business in Nebraska as a common carrier by railroad in interstate commerce.

2. That at all material times, Plaintiff, a Nebraska resident, was employed by BNSF as a blacksmith and/or machine operator in BNSF's Maintenance of Way Department.

3. The Court has jurisdiction through 45 U.S.C. '51 et seq., commonly known as the Federal Employer's Liability Act ("FELA") and this action is timely commenced under said statute.

4. On or about December 9, 2020, while working for BNSF as a blacksmith near Percival, Iowa, Plaintiff was injured while welding struts to repair a bridge when he suffered an injury to his left shoulder and to other parts of his body when he was required to use his body to

hold up heavy the heavy in order to weld them in place. BNSF caused the injury, in whole or in part, by failing to provide sufficient workers and/or equipment to hold up the struts while Plaintiff was welding.

5. Plaintiff's headquarters with the defendant was located in Omaha, Nebraska, and his work was assigned and controlled by BNSF managers in that city.

6. Plaintiff's injuries were caused in whole or in part by the acts and omissions of BNSF, its managers, agents, servants, or employees which were negligent in one or more of the following respects:

- a) Failing to provide Plaintiff with a reasonably safe place to work;
- b) Failing to provide Plaintiff with proper tools, equipment, and/or procedures to perform his work;
- c) Failing to provide Plaintiff with sufficient employees to perform the work; and
- d) Other negligence.

7. As a result of his injuries, Plaintiff required medical treatment in the past, including surgery and physical rehabilitation, and will require in the future continuing medical care for his injuries.

8. As a result of his injuries, Plaintiff had to miss substantial time from work and has a loss of past wages and has had to give up his railroad career.

9. As a result of his injuries, Plaintiff will suffer a loss of future earning capacity.

10. As a result of his injuries, Plaintiff has suffered and will continue to suffer into the future, physical and mental pain and suffering and a loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against the defendant for the injuries set forth in Count I in an amount to be determined by a jury for his past and future losses resulting from his injuries.

COUNT II

11. Plaintiff incorporates and realleges Paragraphs 1, 2, 3, 5, 7, 8, 9, and 10 of Count I.

12. On or about December 13, 2021, while working for BNSF as a machine operator near Bartlett, Iowa Plaintiff was injured while working on a bridge when he suffered an injury to left knee and other parts of his body when he fell into a hole at the work site striking and/or twisting his left knee causing an injury to the knee and other parts of his body. The hold was present due to improper preparation of the work site by BNSF.

13. Plaintiff's injuries were caused in whole or in part by the acts and omissions of BNSF, its managers, agents, servants, or employees which were negligent in one or more of the following respects:

- e) Failing to provide Plaintiff with a reasonably safe place to work;
- f) Failing to provide Plaintiff with proper tools, equipment, and/or procedures to perform his work;
- g) Failing to provide Plaintiff with sufficient employees to perform the work; and
- h) Other negligence.

WHEREFORE, Plaintiff demands judgment against the defendant for the injuries set forth in Count I and Count II in an amount to be determined by a jury for his past and future losses resulting from his injuries.

PLAINTIFF DEMANDS TRIAL BY JURY.

Dated: December 6, 2023

By /s/ Joseph M. Sayler

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